

MAILED

MAR 11 2003

38

Paper No. ~~69~~

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Filed by: Judge Andrew H. Metz
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
Fax: 703-308-7953

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Judge Andrew H. Metz)

JACKSON B. HESTER, JR., ROY A. JOHNSON, ROBERT C. KELLY,
ELDON G. NIDY and HARVEY L. SKULNICK
Junior Party¹

v.

HERVÉ BOUCHARD, JEAN DOMINIQUE BOURZAT and ALAIN COMMERÇON
Senior Party²

Patent Interference No. 104,491

JUDGMENT

Before Metz, Pate and Martin, Administrative Patent Judges.

Metz, Administrative Patent Judge.

¹ Application Serial Number 08/454,210, filed on June 9, 1995. Accorded benefit of U.S. application Serial Number 07/990,579, filed December 15, 1992, and now abandoned; U.S. application Serial Number 08/013,826, filed February 2, 1993, and now abandoned; U.S. application Serial Number 08/122,974, filed September 17, 1993, and now abandoned; and, PCTUS93/11827, filed December 13, 1993. Assigned to Pharmacia & Upjohn Co.

² Application Serial Number 08/162,984, filed on December 8, 1993. Accorded benefit of France 92 14813, filed on December 9, 1992. Assigned to Rhone-Poulenc Rorer S.A.

Interference No. 104,491

Receipt on March 5, 2003, of the paper captioned "HESTER REQUEST FOR ENTRY OF ADVERSE JUDGMENT" (Paper Number 67) is herein acknowledged. Therein, Hester et al., the junior party in this interference, have conceded priority of invention as defined by each of the counts in this interference to the senior party, Bouchard et al. Hester et al., the junior party have also requested that entry of adverse judgment be entered against them with respect to all of their claims corresponding to Count 4, Count 2 and Count 3A in this interference.

Accordingly, pursuant to 37 C.F.R. § 1.662(a), judgment as to the subject matter of Count 4 is hereby awarded to Hervé Bouchard, Jean-Dominique Bourzat and Alain Commerçon, the senior party. Hervé Bouchard, Jean-Dominique Bourzat and Alain Commerçon, the senior party, are entitled to a patent containing claim 140 of their involved application Serial Number 08/162,984 designated as corresponding to Count 4. Judgment as to the subject matter of Count 4 is entered against Jackson B. Hester, Jr., Roy A. Johnson, Robert C. Kelly, Eldon G. Nidy and Harvey L. Skulnick, the junior party. Jackson B. Hester, Jr., Roy A. Johnson, Robert C. Kelly, Eldon G. Nidy and Harvey L. Skulnick, the junior party, are not entitled to a patent containing claims 2, 3, 7, 19, 20, 34 through 37, 39 through 42, 44 and 45 of their involved application Serial Number 08/454,210 designated as corresponding to Count 4.

Interference No. 104,491

Judgment as to the subject matter of Count 2 is hereby awarded to Hervé Bouchard, Jean-Dominique Bourzat and Alain Commerçon, the senior party. Hervé Bouchard, Jean-Dominique Bourzat and Alain Commerçon, the senior party, are entitled to a patent containing claim 142 of their involved application Serial Number 08/162,984 designated as corresponding to Count 2.

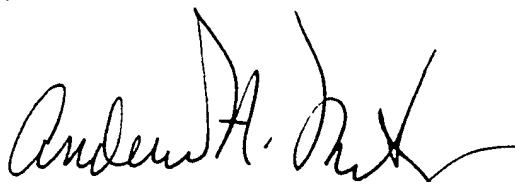
Judgment as to the subject matter of Count 2 is entered against Jackson B. Hester, Jr., Roy A. Johnson, Robert C. Kelly, Eldon G. Nidy and Harvey L. Skulnick, the junior party. Jackson B. Hester, Jr., Roy A. Johnson, Robert C. Kelly, Eldon G. Nidy and Harvey L. Skulnick, the junior party, are not entitled to a patent containing claims 46 of their involved application Serial Number 08/454,210 designated as corresponding to Count 2.

Judgment as to the subject matter of Count 3A is hereby awarded to Hervé Bouchard, Jean-Dominique Bourzat and Alain Commerçon, the senior party. Hervé Bouchard, Jean-Dominique Bourzat and Alain Commerçon, the senior party, are entitled to a patent containing claim 141 of their involved application Serial Number 08/162,984 designated as corresponding to Count 3A.

Judgment as to the subject matter of Count 3A is entered against Jackson B. Hester, Jr., Roy A. Johnson, Robert C. Kelly, Eldon G. Nidy and Harvey L. Skulnick, the junior party. Jackson B. Hester, Jr., Roy A. Johnson, Robert C. Kelly, Eldon G. Nidy and Harvey L. Skulnick, the junior party, are not entitled to a patent

Interference No. 104,491

containing claims 47 of their involved application Serial Number
08/454,210 designated as corresponding to Count 3A.



ANDREW H. METZ)
Administrative Patent Judge)



WILLIAM F. PATE, III.) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
INTERFERENCES)



JOHN C. MARTIN)
Administrative Patent Judge)

AHM/gjh

Interference No. 104,491

Attorney(s) for Hester, Jr. et al.

Carl E. Moore, Jr., Esq.
MARSHALL O'TOOLE, GERSTEIN, MURRAY & BORUN
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6402

Attorney(s) for Bouchard et al.

Thomas L. Irving, Esq.
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street N.W., Suite 700
Washington, D.C. 20005-3315

Attorney(s) for Non-Party Chen et al.

Errol B. Taylor, Esq.
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112

INTERFERENCE DIGEST

Interference No. 104,491 Paper No. 35
Name, Herve Bouchard et al.
Serial No. 08/162,984 Patent No. ----
Title, NEW TAXOIDS, THEIR PREPARATION AND PHARMACEUTICAL COMPOSITION
CONTAINING THEM
Filed, 12/8/93
Interference with Hester et al.

DECISION ON MOTIONS

Examiner-in-Chief, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, Judgment
favorable Dated, 3/11/03

Court, _____ Dated, _____

REMARKS

